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**HIGH COURT OF CHHATTISGARH AT BILASPUR**
**Writ Petition No. 4285 of 2004**

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| Petitioner | | Padum Das, S/o Mahang Das, aged about 29 years, R/o Village-Murkuta, Tahsil-Bilha, District Bilaspur (C.G.) |
| | | Versus |
| Respondents | 1 | Board of Revenue, Chhattisgarh through its Member-Judge, Bilaspur |
| | 2 | Additional Collector, Bilaspur (C.G.) |
| | 3 | Sub-Divisional Officer, Bilaspur (C.G.) |
| | 4 | Tahsildar, Bilha, District Bilaspur (C.G.) |
| | 5 | Santan Das, S/o Pillu Das, aged 29 years, R/o Village-Churaghat, Tahsil-Bilha, District Bilaspur (C.G.) |

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

**SB: Hon'ble Justice Shri Satish K. Agnihotri**

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Present: Mr. I.S. Sahu, counsel for the petitioner.
Mr. Satish Gupta, Dy. Govt. Advocate for the respondents No. 2, 3 and 4.
Mr. Goutam Khetrapal, counsel for the respondent No. 5.

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**ORDER**

**(Passed on this 23rd day of April, 2007)**

1. The petitioner was appointed as Temporary Kotwar of village-Murkuta vide order dated 8.3.2002. During the appointment of the petitioner as temporary Kotwar, the Gram Sabha passed the resolution to appoint the respondent No. 5 as permanent Kotwar of village-Murkuta. Section 230 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as "the Code, 1959") provides for appointment of kotwars and their duties. Rule 4 (1) of the Rules regarding appointment, punishment and removal of Kotwars and their duties (hereinafter referred to as "the Rules") provides that the Revenue Officer is competent to appoint

Kotwar after receiving a resolution duly passed by the Gram Panchayat in whose area the post of Kotwar is vacant. In the present case, the appointment of the respondent No. 5 was admittedly made, not on the basis of the resolution, duly passed by the Gram Panchayat, but on the basis of the resolution passed by the Gram Sabha, which is contrary to the provision of the Rules.

2. Learned counsel appearing for the petitioner submits that the petitioner has filed an appeal, being Case No. 19-A-56-2001-02, before the Sub-Divisional Officer, Bilaspur against the order dated 30.5.2002, passed by the Tahsildar, Bilha, District Bilaspur. The Sub-Divisional Officer vide his order dated 30.11.2002 (Annexure P/3) remanded back the matter on the ground that the authority below has not considered all the aspects before appointing the respondent No. 5 as permanent Kotwar. However, the Sub-Divisional Officer, Bilaspur/respondent No. 3 held that the resolution passed by the Gram Sabha is proper.

3. Against the order dated 30.11.2002, passed by the Sub-Divisional Officer, Bilaspur, the respondent No. 5 filed a revision, being Revision Case No. 11/A-56/02-03, before the Additional Collector, Bilaspur/respondent No. 2, wherein the Additional Collector vide order dated 29.9.2003 (Annexure P/4) allowed the revision on other points, but confirmed the finding of the Sub-Divisional Officer with regard to appointment based on the resolution passed by the Gram Sabha.

4. Against the order dated 29.9.2003, passed by the Additional Collector, Bilaspur, the petitioner filed an appeal, being Revenue Appeal Case No. 22/A-56/2003-04, before the Board of Revenue, Bilaspur, wherein the Board of Revenue vide order dated 13.10.2004 (Annexure P/6), maintained the finding of the Additional Collector to the effect that the

resolution passed by the Gram Sabha was correct and dismissed the appeal.

5. Being aggrieved and dissatisfied with the orders, passed by the authorities below, the petitioner has filed this petition.

6. I have heard learned counsel appearing for the parties and gone through the pleadings and documents appended thereto. The authorities below have committed serious infirmity in arriving to the conclusion that the resolution duly passed by the Gram Sabha for appointing the respondent No. 5 as Kotwar was just and proper and appointment made on the basis of the said resolution was legal and valid.

7. It is beneficial to quote Rule 4 of the Rules, which reads as under:-

> "4. [1][(1) On the occurrence of a vacancy in the post of a Kotwar, the Revenue Officer, who is empowered to make appointment, after receiving a resolution duly passed by the Gram Panchayat in whose area the post of Kotwar is vacant, shall appoint an eligible person on the post of Kotwar, if the person proposed in the resolution does not fulfill the qualification prescribed in rule 2, the authorised Revenue Officer shall reject the resolution after recording the reasons in writing and intimate the Gram Sabha and call for a fresh proposal:
>
> Provided that immediately on occurrence of a vacancy, the appointing authority may temporarily appoint a suitable person to perform the duties of the office of Kotwar till the regular appointment under sub-rule (1) is made.]
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> xx xxx xxx xx"

8. The State of Madhya Pradesh by notification dated 20.11.2001 substituted the word "Gram Panchayat" by the "Gram Sabha", but the

same is not applicable in case of the State of Chhattisgarh, as the State of Chhattisgarh came into existence w.e.f. 1.11.2000 and all the rules made under the M.P. Land Revenue Code, 1959 prior to 1.11.2000 were adapted as it is, but the subsequent amendment made in Rule 4 by the Sate of Madhya Pradesh is not admittedly applicable to the State of Chhattisgarh. So far as the State of Chhattisgarh is concerned, the old Rule 4, as stated above, is applicable.

9. The provision of Rule 4 of the Rules is so clear as it does not admit of any ambiguity or confusion. The appointment on the post of Kotwar has to be made by the Revenue Officer after receiving a resolution duly passed by the Gram Panchayat, but in the present case, admittedly, the resolution was passed by the Gram Sabha, village-Murkuta.

10. Thus, this petition is allowed and the order dated 30.5.2002 (Annexure P/2), passed by the Tahsildar, Bilha is held as void *abinitio* and subsequently, confirmed by the authorities below are also vitiated and are accordingly quashed. The Gram Panchayat, Village-Murkuta is at liberty to take steps for appointment a permanent Kotwar, as early as possible, in accordance with law.

11. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu